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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,304	02/13/2004	Sheng-He Huang	CIP2411A-SHH	7978
30265	7590	06/01/2007		
RAYMOND Y. CHAN 108 N. YNEZ AVE., SUITE 128 MONTEREY PARK, CA 91754			EXAMINER PORTNER, VIRGINIA ALLEN	
			ART UNIT 1645	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10779304	2/13/04	HUANG, SHENG-HE	CIP2411A-SHH

RAYMOND Y. CHAN  
108 N. YNEZ AVE., SUITE 128  
MONTEREY PARK, CA 91754

**EXAMINER**

Ginny Portner

ART UNIT	PAPER
1645	20070524

**DATE MAILED:**

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Please see attached 30 day letter in response to Applicants Response to the Office Action Dated January 25, 2006.

***Status of Claims***

1. Claims 1-2 have been canceled; claims 3-17 stand withdrawn from consideration.
2. The instant Applicant has been revived from abandonment. Applicant's response to the Non-final Office Action dated May 23, 2006 will be addressed below.

***The Election/Restriction was Proper.***

3. The Election/Restriction set forth in the Office Action dated January 9, 2006 restricted the originally filed claims into three groups. Applicant elected in a letter dated February 22, 2006 Group I, claims 1-2. The original Election Restriction is reprinted herein to show the groups and the different modes of operation, different functions and different effects of the claimed inventions.

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-2, drawn to method of providing a nucleic acid sequence encoding ibeA, classified in class 536, subclass 23.7.
  - II. Claims 3-10, drawn to probiotic live bacteria, classified in class 424, subclass 93.45.
  - III. Claim 11-17s, drawn to prebiotics, classified in class 424, subclass 490.

The inventions are distinct, each from the other because of the following reasons:

5. Inventions Group I and Group II or III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of

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operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions.

- a. Group I is directed to a method of providing a complete nucleic acid of a pathogenic E.coli, Group II is directed to compositions of probiotic *live bacteria* that competitively prevent the establishment of E.coli infection and Group III is directed to prebiotics that do not encompass live bacteria, nor nucleic acid molecules but encompass sugar carbohydrate molecules that coat the lining of the gastrointestinal tract of a mammal. The reagents and methods steps of Group I do not encompass the probiotic bacteria of Group II, nor the prebiotic of Group III and therefore are directed to and encompasses components and reagents that structurally and functionally differ from each other thus defining independent and distinct inventions which evidence differing biological effects based upon the structurally and functionally distinct components/reagents of each Group. Groups I, II and III have different modes of operation, different functions, and different effects.
6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

***Response to the Non-Final Office Action Dated May 23, 2006***

7. The elected claims have been canceled leaving only non-elected, non-examined claims in the instant Application.

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8. The reply filed on March 22, 2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The elected, examined claims have been canceled and the proper filing papers and fees for a divisional Application have not been filed. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

***Filing of a Divisional Application***

9. A continuation or divisional application filed under 37 CFR 1.60 on or after December 1, 1997, will automatically be treated as an application filed under 37 CFR 1.53(b). All continuation and divisional applications filed under 37 CFR 1.60 prior to December 1, 1997 will continue to be processed and examined under the procedures set forth in former 37 CFR 1.60. \*\*>For more information pertaining to practice and procedure under former 37 CFR 1.60, see MPEP § 201.06(a) in the MPEP 8th Edition, Rev. 1 (February 2003)(available on the USPTO web site at [www.uspto.gov/web/offices/pac/mpep/mpep.htm](http://www.uspto.gov/web/offices/pac/mpep/mpep.htm)).<

201.06(b) [R-2] Former 37 CFR 1.62 File Wrapper Continuing Procedure\* 37 CFR 1.62 was deleted effective December 1, 1997. See 1203 O.G. 63, October 21, 1997. A >request for a< continuation or divisional application filed under former 37 CFR 1.62 on or after December 1, 1997, >, in an application that was filed on or after June 8, 1995,< will be treated as a request for continued examination (RCE) under 37 CFR \*>1.114<, see MPEP 706.07(h), paragraph IV.

\*\*>A request< filed on or after December 1, 1997, under former 37 CFR 1.62 \*>for< a

continuation-in-part (CIP) application, \*\*>, or for a continuation or divisional of an application having a filing date before June 8, 1995,< will be treated as an improper application.

**§ 1.53 Application number, filing date, and completion of application.**



(a) *Application number*. Any papers received in the Patent and Trademark Office which purport to be an application for a patent will be assigned an application number for identification purposes.

(b) *Application filing requirements - Nonprovisional application*. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a).

(1) A continuation or divisional application that names as inventors the same or fewer than all of the inventors named in the prior application may be filed under this paragraph or paragraph (d) of this section.

(2) A continuation-in-part application (which may disclose and claim subject matter not disclosed in the prior application) or a continuation or divisional application naming an inventor not named in the prior application must be filed under this paragraph.

**35 U.S.C. 120 Benefit of earlier filing date in the United States.**

An application for patent for an invention disclosed in the manner provided by the first paragraph of **section 112** of this title in an application previously filed in the United States, or as provided by **section 363** of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the

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Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section. (Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (571) 272-0862. The examiner can normally be reached on flextime, but usually M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571) 272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vgp  
May 24, 2007

  
MARK NAVARRO  
PRIMARY EXAMINER